

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KENT W. GAIN, SR.,

Plaintiff,

v.

Case No.: 8:18-cv-01389-AAS

**ANDREW M. SAUL,
Commissioner of Social Security,**

Defendant.

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ORDER

Kent Gain moves for relief from an order awarding attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). (Doc. 27). This request is unopposed. (*Id.* at p. 3).

The Commissioner moved to remand this action, which the court granted. (Docs. 20, 21). The court then granted Mr. Gain's petition for attorney's fees under the EAJA on April 12, 2019. (Doc. 24). Following remand and the denial of Mr. Gain's claim for Social Security disability benefits, Mr. Gain filed a second appeal in *Gain v. Comm'r*, Case No. 8:20-cv-00680-KKM-JSS. The Commissioner again moved for remand, which was granted. *See* Case No. 8:20-cv-00680-KKM-JSS (Dosc. 21, 23, 24, 25).

After obtaining the agreement of the Commissioner to the award of

attorney fees under the EAJA in Case No. 8:20-cv-00680-KKM-JSS, Mr. Gain inadvertently filed the Petition for Attorney fees in the 2018 case number, instead of in the correct case filed in 2020, Case No. 8:20-cv-00680-KKM-JSS (Doc. 26).¹

Under Fed. R. Civ. P. 60(b)(1), this court can vacate an order for “mistake, inadvertence, surprise or excusable neglect.” Thus, the court may vacate the order awarding attorney’s fees dated April 26, 2021 (Doc. 26), because the motion was mistakenly filed in the incorrect case.

Mr. Gain’s consent motion for relief from the order entered on April 26, 2021, awarding attorney’s fees under the EAJA (Doc. 27) is **GRANTED**. The order dated April 26, 2021 that granted Mr. Gain’s Consent Motion for Attorney’s Fees and awarded attorney fees of \$6,547.46 is **VACATED**.

ORDERED in Tampa, Florida on June 1, 2021.



AMANDA ARNOLD SANSONE
United States Magistrate Judge

¹ Mr. Gain filed two Social Security appeals: (1) a case filed under this docket number on June 18, 2018 (Doc. 1); and (2) a case filed on March 24, 2020, in Case No. 8:20-cv-00680-KKM-JSS. Both cases are titled *Kent W. Gain, Sr., v. Comm’r of Soc. Sec.*